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10 MINERAL COUNTY

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15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE DISTRICT OF NEVADA

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19 UNITED STATES OF AMERICA, )  
20 )  
21 Plaintiff, ) IN EQUITY NO. C-125-C-ECR  
22 )  
23 WALKER RIVER PAIUTE )  
24 TRIBE, )  
25 )  
26 Plaintiff-Intervenor, ) POINTS AND AUTHORITIES IN  
27 ) OPPOSITION TO WRID'S  
28 vs. ) MOTION TO VACATE SCHEDULE  
WALKER RIVER IRRIGATION ) AND IN SUPPORT OF COUNTER  
DISTRICT, a corporation, et al. ) MOTION FOR SANCTIONS  
Defendants. )  
-----)

COME NOW the undersigned and file this Opposition to  
Motion of WRID to Vacate Schedule and a Counter Motion for  
Sanctions, and further moves this Court,

(a) For an Order relieving MINERAL COUNTY of any further service to water rights holders of the WALKER RIVER because of the multitude of defendants, pursuant to Rule 5 of the Federal Rules of Civil Procedure (FRCP);

(b) Further, an Order declaring that the service made upon the water rights holders of the WALKER RIVER by MINERAL

1 COUNTY (See Proof of Service, June 1995), gave sufficient notice  
2 of the action as required by Rule 4, FRCP, and the Order of this  
3 Court;

4 (c) Further, an Order to Show Cause why Sanctions  
5 should not be imposed upon the WALKER RIVER IRRIGATION DISTRICT  
6 (WRID), Plaintiff herein; Mr. James Weishaupt, Manager of WRID;  
7 Beverly Landolt, Chair of WRID; Peter Fenili, Director of WRID,  
8 David Sceiriney, David Peri and Robert Bryan, the Members of the  
9 Board of Directors of WRID, as a Board and as individuals; Mr.  
10 Gordon DePaoli, individually; Woodburn and Wedge; and Mr. Stewart  
11 Somach, individually, for interference in the service on water  
12 rights holders on the Walker River made by MINERAL COUNTY;

13 (d) Further, an Order, pursuant to this Court's in-  
14 herent authority, to impose sanctions assessing the costs of the  
15 service by MINERAL COUNTY already incurred to be reimbursed to  
16 MINERAL COUNTY, and the costs of pursuing these motions and the  
17 attorneys fees be assessed against those persons and entities  
18 named, jointly and severally;

19 (e) Further, an Order by the Court, that in the event  
20 the Court should determine that personal service be made on the  
21 water rights holders who have not waived service, taxing all such  
22 costs of such service to those named persons and entities found  
23 to have interfered with MINERAL COUNTY'S attempt to obtain waiv-  
24 ers of service and that those costs be collected prior to said  
25 service being required; and,

26 (f) Further, an Order of the Court denying the request  
27 for an extension of time by WRID and the State of Nevada.

28 The grounds for this Motion as follows:

(1) MINERAL COUNTY, pursuant to the Order of this Court dated 9 February, 1995, did acquire the names and addresses of water rights holders on the WALKER RIVER in California and Nevada and did prepare the notice and documents according to the Court's Order; did mail the documents on or about April 11, 12, & 18, 1995, according to the Court's Order and did incur considerable costs to accomplish the Order of this Court.

(2) The WALKER RIVER IRRIGATION DISTRICT and the other above-named persons and entities, on or about April 17, 1995, did cause to have mailed a notice to the water rights holders on the WALKER RIVER during and immediately after the documents were served by mail by MINERAL COUNTY. The notice was sent to members of WRID and others requesting and advising water rights holders not to return the waiver of personal service. A notice was also sent in the official publication of the Walker River Users Association of May, 1995, advising recipients of the publication not to return the Waiver of Personal Service on advice of counsel Woodburn and Wedge and Stewart Somach.

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Attachments hereto, the declarations of Kelvin Buchanan, James Spoo, Louis Thompson, upon the provisions of the Federal Rules of Civil Procedure, the inherent authority of this Court, the Order of this Court, the returns and documentation filed herewith, and papers and records on file herein.

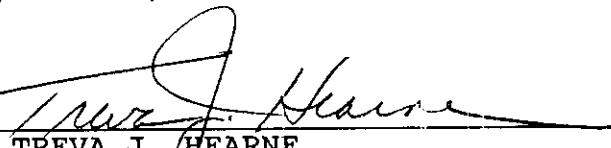
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1 DATED this \_\_\_\_ of June, 1995.  
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4 ZEH, POLAHA, SPOO & HEARNE  
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6 By   
7 TREVA J. HEARNE  
8 Attorneys for Plaintiff-  
9 Intervenor  
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1                           POINTS AND AUTHORITIES

2                           INTRODUCTION

3                           Intervenor, MINERAL COUNTY, has discovered certain  
4                           actions were taken by WALKER RIVER IRRIGATION DISTRICT ("WRID"),  
5                           Plaintiff herein, and its counsel and others', to interfere and,  
6                           in fact, to frustrate the service on water rights holders of the  
7                           WALKER RIVER made by MINERAL COUNTY pursuant to the Court's  
8                           Order. Certainly, the relief requested by MINERAL COUNTY in this  
9                           instance is necessary for MINERAL COUNTY's continuing right to  
10                          participate in this litigation. MINERAL COUNTY respects the  
11                          ultimate disposition of justice that was the Court's concern in  
12                          requiring MINERAL COUNTY to make this costly service of process.  
13                          The actions that have occurred have frustrated a very costly  
14                          process. Such continued actions would foreclose MINERAL COUNTY  
15                          from this forum by aggravating this costly process.

16                          Several factors prompted this Motion: (1) That MINERAL  
17                          COUNTY is a political subdivision of the State and all parties  
18                          have a special burden to insure that the funds collected from the  
19                          taxpayers and expended to preserve their natural resource, WALKER  
20                          LAKE, obtain the most value for the public and, therefore, inter-  
21                          fering with the service carried out by a public entity deserves  
22                          greater scrutiny; (2) that MINERAL COUNTY found the records of  
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25                          Mineral County alleges that all persons and entities  
26                          heretofore named, conspired and participated in the actions  
27                          to frustrate service by Mineral County, but Mineral County  
28                          does not know to what extent each person or entity  
                                participated, and, therefore, intends to include all persons  
                                and entities by referring to them as "WRID and others" or  
                                "WRID et al." Mineral County has no information regarding  
                                the involvement of the State of Nevada who has joined WRID's  
                                Motion.

1       the water rights holders on the WALKER RIVER to be considerably  
2       out-dated and that this initial service effort was actually ac-  
3       complishing an up-date of the records that would have aided all  
4       parties to this matter if the service had been respected; and  
5       finally (3) that MINERAL COUNTY asks this Court to admonish all  
6       counsel that every member of the Bar who practices before the  
7       Federal Court has a duty to guide his actions pursuant to the  
8       Code of Professional Responsibility and good faith toward other  
9       parties.

10                  FACTS

11                  On January 13, 1995, the parties who had already  
12       entered appearances in this matter, including Woodburn and Wedge,  
13       on behalf of WRID, entered into a stipulation for an extension of  
14       time in which to agree to a proposed order regarding the service  
15       of intervention documents by MINERAL COUNTY and a schedule for  
16       responses from those who are already parties to this action. Mr.  
17       DePaoli, counsel for WRID, himself, made certain changes to the  
18       Order proposed by counsel for MINERAL COUNTY (See, Affidavit of  
19       James Spoo). Pursuant to this stipulation and the agreement of  
20       all parties, the Court entered its "Order Requiring Service and  
21       Establishing Briefing Schedule Regarding the Motion to Intervene  
22       of Mineral County" on February 9, 1995.

23                  On March 10, 1995, MINERAL COUNTY filed an amended  
24       Motion to Intervene and Points and Authorities in Support there-  
25       of, an amended proposed Complaint in Intervention, a Motion for  
26       Preliminary Injunction and Affidavits and Points and Authorities  
27       in support thereof with the Court and with all parties of record,  
28       including WRID's counsel. WRID's counsel received a complete

1 copy of each and every document filed with the Court, including  
2 complete copies of all affidavits.

3 During the rest of the month of March, 1995, MINERAL  
4 COUNTY worked arduously with over 13 volunteers to accomplish  
5 service as the Court directed to over 1200 parties (See Affidavit  
6 of Lou Thompson). The lists of water rights holders were furn-  
7 ished by WRID, the Watermaster, and by making a laborious per-  
8 sonal check of the non-computerized files of the State Engineer.  
9 After many telephone conferences with the Department of Justice  
10 in order to determine the most accurate and up-to-date list of  
11 water rights holders, it became more than apparent that the list  
12 WRID had furnished MINERAL COUNTY and the State Engineer's list  
13 were woefully dated (See Affidavit of K. Buchanan). Nonethe-  
14 less, MINERAL COUNTY embarked upon a task that involved nearly  
15 \$10,000.00 of expenditures and over 200 man hours to complete  
16 (See, Affidavits of Lou Thompson and K. Buchanan).

17 Fortunately, persons were initially quite receptive to  
18 the service and were calling our offices and the offices of K.  
19 Buchanan to furnish us with up-dated addresses and transfers of  
20 the water rights. Abruptly, the calls and returns ceased on  
21 April 21, 1995. (See Affidavit of K. Buchanan). Unbeknownst to  
22 counsel, volunteers, and elected officials of MINERAL COUNTY;,  
23 WRID; Mr. Gordon DePaoli and Mr. Stewart Somach had totally  
24 frustrated all of their hours of work. With a highly emotional  
25 plea that implied that MINERAL COUNTY would steal everyone's en-  
26 tire water rights, the WRID newsletter and notice from the Walker  
27 River Users' Group advised every recipient to ignore MINERAL  
28 COUNTY'S service. All of this was conducted outside the court-

1 room and with no notice to counsel for MINERAL COUNTY.

2 After a week of fair success in receiving responses and  
3 information, all progress in identifying water rights holders on  
4 the Walker River was brought to a cataclysmic halt. The notice  
5 from WRID arrived in the mailboxes of the water rights holders  
6 advising them not to answer the Waiver of Service (See Attachment  
7 1).

8 Never did any counsel, manager or agent of WRID advise  
9 counsel for MINERAL COUNTY of any defect in service. As of April  
10 21, 1995, the outstanding notices not returned numbered nearly  
11 1000. The WRID list of membership is nearly 90% of the water  
12 rights holders of the Walker River. Moreover, when this unex-  
13 plained cessation of activity occurred, counsel for MINERAL  
14 COUNTY initiated contact with other parties of record trying to  
15 identify why this abrupt failure to hear from other recipients  
16 had occurred (See, Affidavit of James Spoo). MINERAL COUNTY  
17 offered to send another mailing to those who failed to respond to  
18 further explain the process. At that time the State of Nevada  
19 sent a letter approving of the service as it was mailed (See,  
20 Affidavit of James Spoo). Incredibly enough, counsel for WRID  
21 stated that MINERAL COUNTY could not further discuss the service  
22 with the recipients since it would be giving legal advise to  
23 persons MINERAL COUNTY didn't represent.

24 Having realized the existence and devastating effect of  
25 the WRID, et al, notices on the MINERAL COUNTY service, MINERAL  
26 COUNTY is compelled to make the following Motions to recover its  
27 costs, knowing full well that the real and certain damage of los-  
28 ing the opportunity to up-date records of water rights holders on

1       the Walker River is tainted forever by the actions of WRID, et  
2       al. This is a grave situation requiring a remedy in order to  
3       preserve the integrity of the judicial process; therefore,  
4       MINERAL COUNTY states as follows:

5       I. MINERAL COUNTY HAS COMPLIED FULLY WITH THE ORDER OF THIS  
6       HONORABLE COURT FOR SERVICE.

7           A. FRCP, RULE 4 REQUIRES THAT THE RECIPIENT OF NOTICE  
8       BE FAIRLY APPRISED OF THE ACTION.

9           Most of the case law regarding substantial compliance  
10      with FRCP, Rule 4, regards the service of process with summons  
11      and complaint. However, certain parallels in the Court's find-  
12      ings regarding what is sufficient notice in a summons and com-  
13      plaint are quite relevant to refute the WRID allegation that  
14      MINERAL COUNTY'S service was not complete. The Courts have been  
15      quite clear about what is sufficient notice. MINERAL COUNTY'S  
16      service with Request for Waiver was more than sufficient to give  
17      notice of the commencement of the action.

18           The threshold question to be considered is whether WRID  
19      is the proper party to challenge service in this instance. Coun-  
20      sel for WRID received a copy of each and every page filed with  
21      the Court on or about March 10, 1995. MINERAL COUNTY contends  
22      that counsel for WRID and the State of Nevada should be ordered  
23      by the Court to declare if they represent the membership of WRID  
24      and the water rights holders on the Walker River by virtue of  
25      challenging this service.

26           The Order of the Court states that if MINERAL COUNTY  
27      "chooses to send Waiver of Service" then it shall send the  
28      "Complaint-in-Intervention" (See, Order, February 9, 1995,

1 Paragraph 2). MINERAL COUNTY did send the Amended Complaint  
2 in Intervention with the Waiver of Service. Contrary to the  
3 allegations of WRID, no Affidavits are referenced in the Com-  
4 plaint in Intervention.

5 However, in an abundance of caution and to avoid any  
6 question regarding service of the Motion for Preliminary In-  
7 junction, MINERAL COUNTY sent copies of those documents as well.  
8 Since MINERAL COUNTY gratuitously sent those documents, it of-  
9 fered the lengthy and technical Affidavits and placed them at  
10 locations easily accessible by any persons receiving service.  
11 At no time did MINERAL COUNTY, its counsel, or agents receive any  
12 notice or calls whatsoever saying that any recipient of the serv-  
13 ice needed the affidavits in order to understand the complaint in  
14 intervention or the pending action. This allegation by WRID is  
15 superfluous and flies in the face of the interpretations by the  
16 Courts regarding sufficient notice and, certainly, was not re-  
17 quired by this Court's order. Moreover, the costs of duplicating  
18 the technical information and gratuitously including it in the  
19 service as well would have nearly doubled the already costly  
20 service. It is a thinly disguised effort by WRID, et al, to make  
21 this litigation so costly as to prohibit MINERAL COUNTY from  
22 reaching the merits of its case before this Court.

23 B. THE COURTS HAVE LIBERALLY CONSTRUED FRCP TO REQUIRE  
24 SUBSTANTIAL NOTICE TO THE PARTY.

25 The Courts have generally required that the notice  
26 serve to advise the defendant of the nature of the case.

27 It has long been settled that "statutory provi-  
28 sions shall be liberally construed to promote

1           their object.....It is accepted that "mere  
2           irregularities in the form of process do not  
3           render it void where such defective process  
4           "is sufficient to advise the defendant of the  
5           nature of the case, the court in which it is  
6           filed, and his interest therein....(citations  
7           omitted)....

8           Nikwei v. Ross School of Aviation, Inc., 822  
9           F.2d 939, 944 (10th Cir. 1987).

10          In most instances, the Court is asked to determine  
11         whether service was adequate in the context of a defendant asking  
12         for a default judgment to be set aside. In those cases, the  
13         Court construes the service in terms most favorable to the party  
14         seeking to set aside the default. Nonetheless, the 9th Circuit  
15         held as follows:

16          The entry of final default judgment by the  
17         district court was proper. Neither the text  
18         of the Federal Rules, nor judicial interpre-  
19         tation placed in the rules by the Federal Courts  
20         contemplate that a party may totally ignore  
21         pleadings and notices it receives in an un-  
22         founded assurance that a technical omission  
23         absolves him or her or it from responding to  
24         a galaxy of notices, as filed here, warning  
25         of possible entry of a final default judgment.  
26         (citations omitted).

27          Sanderford v. Prudential Ins. Co. of America,  
28         902 F.2d 897, 901 (11th Cir. 1990).

1           The Court, then, has emphasized that technical omissions  
2 or defects do not defeat good service. The Court focuses  
3 attention on whether the defendant received notice of the nature  
4 of the action. Certainly, the recipient received 1) a Request  
5 for Waiver of Service, personally addressed to him, which terms  
6 contained therein were agreed to by all parties, 2) an Order  
7 whose wording was agreed to by all parties; and, 3) documents  
8 that indicated the nature of the action. All recipients received  
9 adequate notice as required by Rule 4.

10           Of most pertinent relevance is the Congressional Record  
11 with comments regarding the interpretation of the Rule. In the  
12 case Combs v. Nick Garin Trucking, 825 F.2d 437 (D.C. Cir. 1987),  
13 the Court cited the comments of the sponsor of the legislation  
14 enacting this part of the Rules:

15           ... (I)n order to encourage defendants to re-  
16 turn the acknowledgment form, the court can  
17 order a defendant who does not return it to  
18 pay the costs of service unless the defendant  
19 can show good cause for the failure to return  
20 it;... Fairness requires that a person who  
21 causes another additional and unnecessary ex-  
22 pense in effecting service ought to reimburse  
23 the party who was forced to bear the additional  
24 expense..."

25           128 Cong.Rec. H9850 (Dec. 15, 1982)

26           This leaves the Court with an interesting question in  
27 the instant case. Clearly, it was not the recipients of the  
28 service who determined on their own to ignore MINERAL COUNTY'S

1 request for Waiver of Service. Indeed, it was WRID, et al, with  
2 its leverage over these recipients who determined to have them  
3 ignore MINERAL COUNTY'S request for Waiver of Service. If the  
4 Court is to carry out the intent of the Rule, as expressed in the  
5 Congressional Record, then it will tax the costs of the service  
6 made and future service required to WRID, et al, as the persons  
7 and entities who caused the "additional and unnecessary expense  
8 in effecting service."

9                 The Ninth Circuit Court of Appeals has had an oppor-  
10 tunity to decide the parameters of the Rule allowing Request for  
11 Waiver of Service and relied upon Wright and Miller:

12                 Our interpretation of Rule 4(c)(2)(C)(ii)  
13 fulfills the goals of Rule 4, which was de-  
14 signed to provide maximum freedom and flex-  
15 ibility in the procedures for giving all  
16 defendants...notice of commencement of the  
17 action and to eliminate unnecessary techni-  
18 cality in connection with service of process.

19                 4 C. Wright and A. Miller, Federal Practice  
20 and Procedure, Section 1061, at 216 (2d ed.  
21 1987) (citing cases).

22                 Electrical Specialty Company v. Road and Ranch  
23                 Supply, Inc., 967 F.2d 309, 314 (9th Cir. 1992).

24                 The Courts have consistently given a liberal con-  
25 struction to the technical rules of notice. Certainly, MINERAL  
26 COUNTY succeeded in giving adequate notice when it complied with  
27 the Order of the Court and served the Complaint in Intervention  
28 with the Request for Waiver of Service. And further, all re-

1 cipients were fully apprised of the nature of the action as suc-  
2 cinctly attested to by the State of Nevada Attorney General.<sup>2</sup>  
3 For the foregoing reasons, MINERAL COUNTY respectfully requests  
4 that the Court find that the technical defect, if it exists at  
5 all, as alleged by WRID, is insignificant and did not prejudice  
6 the persons served and that the documents served by MINERAL  
7 COUNTY gave sufficient notice.

8                 II. THE COURT SHOULD IMPOSE SANCTIONS UPON THE PERSONS  
9 AND ENTITIES FOR INTERFERENCE WITH MINERAL COUNTY'S SERVICE  
10 PURSUANT TO THE COURT'S ORDER.

11                 A. WOODBURN AND WEDGE DO NOT REPRESENT THE PARTIES  
12 RECEIVING THIS SERVICE WHO SHOULD PROPERLY FILE ANY ACTION  
13 CHALLENGING ADEQUACY OF SERVICE OR, IN THE ALTERNATIVE, WOODBURN  
14 AND WEDGE DO REPRESENT THE PARTIES RECEIVING NOTICE AND SHOULD BE  
15 HELD TO REPRESENT THEM FOR ALL PURPOSES.

16                 Woodburn and Wedge and Mr. Stewart Somach gave their  
17 phone numbers in the Notice to advise the recipients to ignore  
18 the Request for Waiver of Service sent by MINERAL COUNTY. (See  
19 Affidavit of Louis Thompson). Woodburn and Wedge filed a Motion  
20 to challenge MINERAL COUNTY'S based upon lack of inclusion of  
21 affidavits; however, these documents were furnished to Woodburn  
22 and Wedge for their clients. Mr. Stewart Somach has not made an  
23 entry of appearance in this case so MINERAL COUNTY cannot de-  
24 termine who he represents in this matter other than the fact that

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<sup>2</sup> In a letter to Mr. Jim Spoo dated April 28, 1995, the  
27 Attorney General's office stated: "The documents which the  
28 Court ordered Mineral County to serve on the water right  
holders speak for themselves and are sufficiently clear to  
apprise the water right holders of the lawsuit and steps to  
be taken."

1 the recipients of the WRID, et al newsletter. If the Court de-  
2 termines that Woodburn and Wedge did affirmatively interfere in  
3 MINERAL COUNTY'S service of process, the sanctions can be imposed  
4 because Woodburn and Wedge have already entered an appearance in  
5 this matter. The Court will have to determine if its inherent  
6 authority extends to counsel not in the case.

7 If the Court determines that Woodburn and Wedge, as  
8 counsel to WRID, also represents its membership, then certainly,  
9 no violation of the Code of Professional Responsibility has  
10 occurred. The Court can easily resolve the remainder of the  
11 service of process issue by determining that Woodburn and Wedge  
12 represent the membership of WRID for all purposes. Then the  
13 legal advice to the membership via the newsletter and notice are  
14 appropriate and it is also appropriate that Woodburn and Wedge  
15 accept service for all members of WRID and the service of process  
16 on multiple defendants is complete. Since Woodburn and Wedge  
17 have utilized the WRID newsletter for the communication of in-  
18 formation; then, the deduction that Woodburn and Wedge can easily  
19 communicate with its clients follows.

20 B. THE PARTIES INTERFERING IN THE SERVICE CONDUCTED BY  
21 MINERAL COUNTY HAVE INTERFERED WITH THE COURT'S ORDER.

22 The Court has three sources of authority to impose  
23 sanctions against parties and attorneys for bad faith conduct.  
24 The FRCP, in Rules 11, 26(g), 37(b)(2) and 56(g), limits the  
25 power to impose sanctions to pleadings and papers in court,  
26 properly signed pleadings, and discovery matters. 28 U.S.C.,  
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1       Section 1927<sup>3</sup> authorizes the Court to assess penalties against  
2       attorneys practicing before it for vexatious delay, etc. Finally,  
3       the Court has inherent powers to "manage their own proceedings  
4       and to control the conduct of those who appear before them."  
5       Chambers v. Nasco, Inc., 111 S.Ct. 2123 (1991), p.2126. The  
6       Chambers Court imposed sanctions on the party and his counsel be-  
7       cause of conduct by them that "attempted to deprive the court of  
8       jurisdiction by acts of fraud, nearly all of which were performed  
9       outside the confines of the court." Chambers, p 2126.

10           The Supreme Court of the United States recognized that  
11       federal courts must be allowed to exercise this inherent power  
12       when, at times, it is necessary for justice to proceed. How ap-  
13       propriate to exercise this power in the instant case because of  
14       the unique situation of the public body making the service with  
15       limited funds and the overreaching influence exercised by the  
16       party frustrating the service.

17           Not all parties are equal in this litigation. MINERAL  
18       COUNTY argues that disrespect for expenditure of taxpayer funds  
19       deserves closer scrutiny. WRID, et al, have displayed careless  
20       dissdain for the attempted service by MINERAL COUNTY. Rather than  
21       portraying MINERAL COUNTY as a villain to its members and notify-  
22       ing them to, in effect, avoid service of process by MINERAL  
23       COUNTY, WRID, et al, had many alternative options available to

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27           Section 1927. **Counsel's liability for excessive costs.**  
28       Any attorney or other person admitted to conduct cases in  
any court of the United States or any Territory thereof who  
so multiplies the proceedings in any case unreasonably and  
vexatioulsy may be required by the court to satisfy  
personally the excess costs, expenses, and attorneys' fees  
reasonably incurred because of such conduct.

1 remedy any questions or concerns it had regarding service.  
2 MINERAL COUNTY offered a supplemental mailing for explanation.  
3 This was rejected with no mention of defects by WRID counsel.  
4 Neither WRID nor any party receiving service filed any timely  
5 Motion to the Court to apprise it of any defects in service. The  
6 alternative chosen by WRID, et al, was to frustrate service by  
7 acts "to deprive the court of jurisdiction, nearly all of which  
8 were performed outside the confines of the court..." acts like  
9 those by Chambers that caused the Court to impose sanctions  
10 through its inherent powers. Moreover, more basis for an exer-  
11 cise of powers exists here because of the respect due the citi-  
12 zens and taxpayers of MINERAL COUNTY.

13 The imposition of sanctions by a Court is generally  
14 based upon conduct by the attorney that has the indicia of bad  
15 faith. An indication of bad faith can be found when the acts  
16 violate the Code of Professional Responsibility or skirt the  
17 appearances of impropriety. Rule 3.2 of the Code of Professional  
18 Responsibility requires attorneys to act in a manner that expe-  
19 dites litigation. ABA Center For Professional Responsibility,  
20 Annotated Model Rules of Professional Conduct, Second Edition,  
21 1992. The juxtaposition of the objection to service, which had  
22 been frustrated by the acts of WRID, et al, and a request for an  
23 extension of time indicates that the acts of WRID in frustrating  
24 service and the filing of the Motion were for the sole purpose of  
25 delay. Rule 4.3 requires that if an attorney advises third  
26 parties, a clarification of his interest in the litigation must  
27 be made. No such clarification accompanied this advice other  
28 than to frustrate the court-ordered service by MINERAL COUNTY.

1 If indeed, that was the purpose, then Rules 3.5, Disruptive  
2 Conduct Outside the Courtroom and Rule 8.4, Conduct Prejudicial  
3 to the Administration of Justice have been violated as well.  
4 Advising third parties to avoid answering the waiver of service  
5 was interference in the administration of justice and did have  
6 the effect of defeating MINERAL COUNTY'S attempts to notify  
7 persons pursuant to the Court's order and to frustrate all ef-  
8 forts to up-date the records of water rights holders in the  
9 Walker River. Had this been just any counsel sending such  
10 advice, it might not have had the decided impact that WRID and  
11 its counsel had. After all, the recipients may have water  
12 rights, but it is not lost on them that WRID advises the Water-  
13 master who is entitled to delivery of the water. No one would  
14 underestimate the influence of WRID over water rights holders on  
15 the Walker River.

16 In Baker Industries, Inc. v. Cereberus Limited, 764 F2d  
17 204 (3d Cir 1985), the Court sanctioned counsel for willful acts  
18 that violated a stipulation previously entered into by him on  
19 behalf of his client. The Court did not require a specific find-  
20 ing of bad faith, but implied the bad faith from the intentional  
21 and willful conduct by counsel. See, also, Peoro v. Eisenman,  
22 793 F2d 1048, 1051, (9th Cir. 1986), where the Court made no  
23 finding of bad faith, but found that the conduct of counsel con-  
24 sisted of acts that caused "vexatious multiplication of proceed-  
25 ings..."

26 The imposition of monetary sanctions on coun-  
27 sel has been looked upon favorably by this  
28 court: We believe that imposing a monetary

1           penalty on counsel is an appropriate sanction  
2           considerably less severe than holding counsel  
3           in contempt, referring the incident to the  
4           client or bar association, or dismissing the  
5           case. If we were to foreclose the district  
6           court from imposing this relatively mild  
7           penalty for violation of the local rules,  
8           district courts would be forced to resort  
9           to more severe sanctions. We also believe it  
10          is appropriate that sanctions such as these  
11          are directed at the lawyers responsible,  
12          rather than the litigants. Miranda v.

13          Southern Pacific Transp. Co., 710 F2d.516,  
14          520-21 (9th Cir.1983) Toombs v.Leone, 777  
15          F.2d 465, 471 (9th Cir. 1985).

16          Based upon the acts of WRID, et al, and its counsel,  
17          and the needless waste of MINERAL COUNTY'S funds and labor to  
18          make service, MINERAL COUNTY respectfully requests that all its  
19          expenses for service, litigation costs in the entire proceeding  
20          and all expert witness fees expended be awarded to it from the  
21          parties named, jointly and severally.

22           IV. THE ORDER ESTABLISHING SCHEDULE WAS AGREED TO BY  
23          STIPULATION AND NOTHING HAS OCCURRED TO REQUIRE THAT THE SCHEDULE  
24          BE CHANGED.

25          WRID received each and every document in its entirety  
26          as it was filed with this Court. Nothing has occurred in the  
27          process of this case that would require a continuance for WRID  
28          other than its own desire to delay these proceedings. The

1 service made by MINERAL COUNTY on the water rights holders of  
2 Walker River has no relevance to the position of WRID unless this  
3 Court finds that by its actions and representations, Woodburn and  
4 Wedge has, in fact, become the legal counsel for the WRID member-  
5 ship. The juxtaposition of the challenge to the service and the  
6 request for delay, evidence the real motive of WRID to delay this  
7 matter unreasonably and, therefore, sanctions should be assessed  
8 for all delays and interference in service of process.

9 WHEREFORE the above-stated reasons, MINERAL COUNTY  
10 respectfully requests that the Court grant it the relief prayed  
11 for herein.

12 Respectfully submitted this 30<sup>th</sup> day of June, 1995.  
13

14 ZEH, POLAHA, SPOO & HEARNE  
15

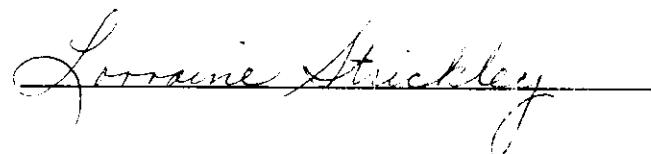
16 By Treva J. Hearne  
17 TREVA J. HEARNE  
18 Attorneys for Plaintiff-  
19 Intervenor  
20  
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1                           CERTIFICATE OF SERVICE

2                           Pursuant to FRCP 5(b), I certify I am an employee of  
3                           the Law Office of JAMES SPOO and TREVA J. HEARNE, and that I  
4                           deposited for mailing, at Reno, Nevada, a true copy of \*\*  
5                           **POINTS AND AUTHORITIES IN OPPOSITION TO WRID'S MOTION TO VACATE**  
6                           **SCHEDULE AND IN SUPPORT OF COUNTER MOTION FOR SANCTIONS \*\*** to:

7  
8                           See attached Service List

9  
10                          this 30 day of June, 1995.

11  
12                            
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## SERVICE LIST

Evan B. Beavers, Esq.  
Beavers & Young  
1616 Highway 395  
P.O. Box 486  
Minden, NV 89423

Roger Bezayiff  
Chief Deputy Water Commissioner  
U.S. Board of Water Commissioners  
P.O. Box 853  
Yerington, NV 89447

Linda Bowman, Esq.  
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P.O. Box 281  
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McCutche, Doyle, Brown & Emerson  
Three Embarcadero Center  
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Reno, NV 89505

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Attorney General, State of Nevada  
198 S. Carson Street  
Capitol Complex  
Carson City, NV 89710

Gordon H. DePaoli, Esq.  
Woodburn & Wedge  
P.O. Box 2311  
Reno, NV 89505

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Department of the Interior  
Two North Central Ave., Suite 500  
Phoenix, AZ 85004

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State of California  
2101 Webster Street  
Oakland, CA 94612-3049

Roger Johnson  
Water Resources Control Board  
State of California  
P.O. Box 2000  
Sacramento, CA 95810

John Kramer  
Department of Water Resources  
1416 Ninth Street  
Sacramento, CA 95814

John P. Lange  
Land & Natural Resources  
Federal Building, Dr. 3607  
Denver, CO 80202

Scott McElroy, Esq.  
Greene, Meyer & McElroy  
1007 Pearl Street  
Boulder, CO 80302

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State Water Resources Control Board  
P.O. Box 100  
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Shirley A. Smith  
Asst. U.S. Attorney  
100 West Liberty, Suite 600  
Reno, Nevada 89501

Garry Stone  
290 South Arlington  
Reno, NV 89510

Western Nevada Agency  
Bureau of Indian Affairs  
1677 Hot Springs Road  
Carson City, NV 89706

**PROOF OF SERVICE BY MAILING**

We are each over the age of 18 years and not parties to the within action. Our addresses are P.O. Box 476, Mina, Nevada 89422 and Po box, 750  
Hawthorne NV 89415, respectively.

On April 10, 12, 18, 1995, we served:

**NOTICE OF MOTION; MOTION OF MINERAL COUNTY OF NEVADA FOR INTERVENTION AND AMENDED POINTS AND AUTHORITIES IN SUPPORT THEREOF; MINERAL COUNTY'S AMENDED COMPLAINT-IN-INTERVENTION; AMENDED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MINERAL COUNTY'S AMENDED COMPLAINT-IN-INTERVENTION; MOTION FOR PRELIMINARY INJUNCTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; ORDER REQUIRING SERVICE OF AND ESTABLISHING SCHEDULE REGARDING THE MOTION TO INTERVENE OF MINERAL COUNTY AND NOTICE OF MOTION TO INTERVENE; PROPOSED COMPLAINT-IN-INTERVENTION AND MOTION FOR PRELIMINARY INJUNCTION OF MINERAL COUNTY AND REQUEST FOR WAIVER OF PERSONAL SERVICE OF MOTIONS**

on each person or entity named below by enclosing a copy in an envelope addressed as shown on the attached sheets and personally placing the envelopes for collection and mailing on the date and at the place shown below.

Date of Mailing: 4/10/95 , 4/12/95 , 4/18/95

Place of Mailing: U.S. Post Office, Hawthorne, Nevada.

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

We declare that we made this mailing at the direction of a member of the bar of this Court.

Executed this 29 day of May, 1995, at Hawthorne, Nevada

Louis Thompson, Nevada.

James n Scott  
James Scott

**AFFIDAVIT OF KELVIN J. BUCHANAN**

I, Kelvin J. Buchanan, being duly sworn, state that:

1. I am a Nevada Registered Professional Engineer, employed by Henkle-Buchanan Group with offices at 63 Keystone, Suite 207, P.O. Box 2391, Reno, Nevada.

2. I arranged for the copying of the Personal Waiver of Service Documents for C-125 on behalf of Mineral County, accepted delivery of said documents and arranged to have said documents forwarded to the Walker Lake Working Group for mailing.

3. The mailing list for service was compiled by computer disc and/or hard copy supplied by the Walker River Irrigation District (WRID), the Federal Water Master's office and the State Engineer's office. In addition, the U.S. Department of Justice (Carol Frick, Denver) forwarded a list of water rights holders compiled from the most recent WRID list the State Engineers office and records of the County Recorder's Office. There were many conversations between Justice and this office during February and March, 1995 to try and explain discrepancies in the lists. The best explanation we could come up with was that some of the list material was stale dated.

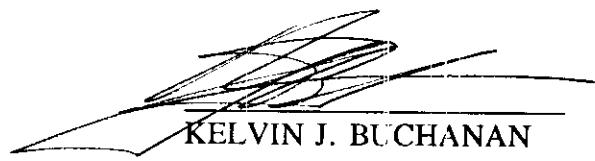
4. I contracted for the printing of 1,200 business envelopes printed with our company address and stamped with \$0.53 postage for returning of the Waiver of Service and included this envelope in each mailed Waiver of Service Document

5. I personally monitored and retrieved from our P.O. Box on a daily basis, all returns of signed Waivers and kept a daily tabulation. I also noted the date of mailing on each return envelope and the postal code it was mailed from.

6. Beginning April 14, 1995 and ending on April 27, a total of 86 Waiver of Service packets were returned. Of these, over 70% were marked "FX," forwarding expired. I called one of theses addressees, Gary M. Hanson, P.O. Box 689, Yerington, NV

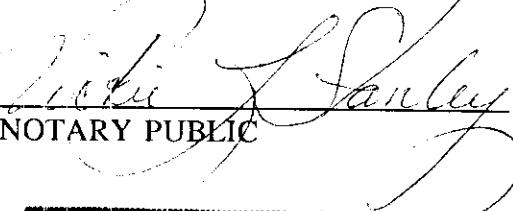
1 costs of which I have no knowledge. The engineering and attorneys fees billed to date are  
2 contained in the files at my office.

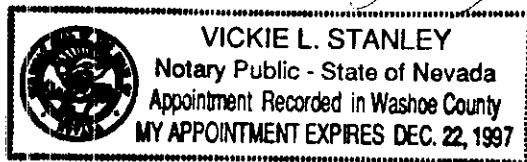
3 Further Affiant saith not.  
4  
5  
6  
7  
8



KELVIN J. BUCHANAN

9 SUBSCRIBED and SWORN to before  
10 me this 14 day of June, 1995, by  
KELVIN J. BUCHANAN.

11   
12 VICKIE L. STANLEY  
13 NOTARY PUBLIC



14  
15  
16  
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## 5.0 TREATMENT OF CLASSES OF MAIL

- Priority and First-Class Mail** Undeliverable Priority and First-Class Mail (including postal cards and postcards) is treated as described in the chart below. Forwarding address information is not provided for mail with the exceptional address format. The Priority Mail portion of a Priority Mail drop shipment receives the forwarding, return, and address-correction services described in this chart. The enclosed mail receives the services appropriate for its class.
- 5.1

Mailer Endorsement	USPS Action
No Endorsement	Forward at no charge (months 1-12). If undeliverable, return to sender with reason for nondelivery. <sup>1</sup>
Address Correction Requested	Do not forward. Provide address correction or reason for nondelivery on mailpiece. Return entire mailpiece at no charge to sender.
Do Not Forward	Do not forward. Provide address correction or reason for nondelivery on mailpiece. Return entire mailpiece at no charge to sender.
Forwarding and Address Correction Requested <sup>2</sup>	Forward at no charge (months 1-12). If undeliverable, return to sender with reason for nondelivery attached at no charge. Charge address-correction fee if separate address correction provided to mailer.

<sup>1</sup> During months 13 through 18, pieces are returned to the sender with an on-piece address correction at no charge.

<sup>2</sup> The authorized abbreviation for this endorsement is "Forward & Address Correction." This abbreviation is authorized when the full endorsement cannot be accommodated.

- Second-Class Mail** Undeliverable second-class mail is treated as described in the chart below and under these conditions:

- 5.2
- When a change of address is filed, copies of second-class publications bearing the old address are forwarded to the new address even if the copies show the sender's request for return.
  - Address correction service is mandatory for all second-class publications and the address-correction service fee must be paid for each notice issued.
  - Address correction service (including address-change service) is provided for the first issue after 60 days for all publications, unless copies are to be returned at the publisher's request. Address change service participants may receive the change notice before day 60, if so requested. Copies received after the address correction notice is mailed are disposed of by the USPS. When copies of the publication cannot be forwarded, the address-correction notice is prepared for the first undeliverable issue of the publication received. Forms 3579 are mailed to publishers at least once a week.
  - Publications with an exceptional form of address are delivered to the address when possible; they are not forwarded. A notice with the reason for nondelivery is sent to the publisher only if the copy cannot be delivered to the current address.
  - The publisher may request the return of copies of undelivered second-class publications by printing the endorsement "Return Postage Guaranteed" on the envelopes or wrappers, or on one of the outside covers of unwrapped copies, immediately preceded by the sender's name, address, and ZIP+4 or 5-digit ZIP Code. The per-piece rate charged for return is the single-piece third- or fourth-class rate. When the address correction is provided incidental to the return of the piece, there is no charge for the correction. Use of this endorsement is the publisher's guarantee to pay return postage.

First Name

Street/po Box Mono Co

Status Coleville CA 96107

Signed  
 Bad  
 Nothing

Town State Zip

comments Richard T. Miller, Supt., Eastern Sierra Unified S.D.

Company Name/last Name Armstrong

First Name

Thomas

Street/po Box 7434 Baldwin Circle

Status Sparks NV 89419

Signed  
 Bad  
 Nothing

Town State Zip

comments

Company Name/last Name Armstrong

First Name

Rita

Street/po Box 7434 Baldwin Circle

Status Sparks NV 89419

Signed  
 Bad  
 Nothing

Town State Zip

comments

Company Name/last Name Baker

First Name

Lawrence E

Street/po Box P O Box 6

Status Coleville CA 96107

Signed  
 Bad  
 Nothing

Town State Zip

comments

Company Name/last Name Barron & Marilyn J Hilton  
First Name Michelle  
Street/po Box 11 Norton Lane  
Status Wellington NV 89444  
 Signed      Town      State      Zip  
 Bad  
 Nothing      comments

---

Company Name/last Name Barron & Marilyn J Hilton  
C/o Flying M Cattle Co.

First Name  
Street/po Box 11 Pine Grove Road  
Status Yerington NV 89447  
 Signed      Town      State      Zip  
 Bad  
 Nothing      comments

---

Company Name/last Name Batchelder

First Name Fred  
Street/po Box Box 484, Highway 208  
Status Yerington NV 89447  
 Signed      Town      State      Zip  
 Bad  
 Nothing      comments

---

Company Name/last Name Batchelder

First Name Josephine  
Street/po Box Box 484, Highway 208  
Status Yerington NV 89447  
 Signed      Town      State      Zip  
 Bad  
 Nothing      comments by Fred Batchelder (deceased 9/9/91)

---

Company Name/last Name Hanifan  
First Name Blanche F  
Street/po Box 5 Highway 95-a East  
Status Yerington NV 89447  
 Signed Town State Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Hanifan  
First Name Phillip  
Street/po Box 815 Wheeler Way  
Status Gardnerville NV 89410  
 Signed Town State Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Hanifan  
First Name Janet  
Street/po Box 815 Wheeler Way  
Status Gardnerville NV 89410  
 Signed Town State Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Hanks  
First Name Lawrence C  
Street/po Box 320 Kuulei Road  
Status Lailua HI 96734  
 Signed Town State Zip  
 Bad  
 Nothing comments

---

First Name

Benjamin F.

Street/po Box

184 Galaxy Way

Status

 Signed Bad Nothing

comments

Lompoc

CA 93436

Town

State

Zip

Company Name/last Name Hawkins

First Name

Juanita

Street/po Box

184 Galaxy Way

Status

 Signed Bad Nothing

comments

Lompoc

CA 93436

Town

State

Zip

Company Name/last Name Hilton

First Name

Barron

Street/po Box

9336 Civic Center Drive

Status

 Signed Bad Nothing

comments

Beverly Hills

CA 90210

Town

State

Zip

Company Name/last Name Hilton

First Name

Marilyn June

Street/po Box

9336 Civic Center Drive

Status

 Signed Bad Nothing

comments

Beverly Hill

CA 90210

Town

State

Zip

First Name Barron  
Street/po Box 11 Pine Grove Road  
Status Yerington NV 89447  
 Signed      Town      State      Zip  
 Bad  
 Nothing      comments

---

Company Name/last Name Hilton

First Name Marilyn June  
Street/po Box 11 Pine Grove Road  
Status Yerington NV 89447  
 Signed      Town      State      Zip  
 Bad  
 Nothing      comments

---

Company Name/last Name Hilton

First Name Barron  
Street/po Box 9990 Santa Monica Blvd  
Status Beverly Hills CA 90212  
 Signed      Town      State      Zip  
 Bad  
 Nothing      comments

---

Company Name/last Name Hilton

First Name Marilyn June  
Street/po Box 9990 Santa Monica Blvd  
Status Beverly Hills CA 90212  
 Signed      Town      State      Zip  
 Bad  
 Nothing      comments

---

Company Name/last Name Hilton

First Name Barron

Street/po Box 10100 Santa Monica Blvd.

Status  
 Signed       Bad       Nothing      comments

Town Los Angeles      State CA      Zip 90025

---

Company Name/last Name Hilton

First Name Marilyn June

Street/po Box 10100 Santa Monica Blvd.

Status  
 Signed       Bad       Nothing      comments

Town Los Angeles      State CA      Zip 90025

---

Company Name/last Name Johnston

First Name Charles

Street/po Box P O Box 1657

Status  
 Signed       Bad       Nothing      comments sold 11/94 to Aiazzi

Town Dayton      State NV      Zip 89403

---

Company Name/last Name Johnston

First Name Pearl D

Street/po Box P O Box 1657

Status  
 Signed       Bad       Nothing      comments sold to Reno, Jim & Anastasia Aiazzi 11/10/94

Town Dayton      State NV      Zip 89403

---

Company Name/last Name Jones  
First Name Thomas F  
Street/po Box P O Box 60396  
Status  
 Signed       Bad       Nothing  
comments

---

Company Name/last Name Keeley

First Name John H.  
Street/po Box P O Box 5  
Status  
 Signed       Bad       Nothing  
comments

---

Company Name/last Name L. A. Dept Of Water & Power  
Eng In Charge Room 1469

First Name  
Street/po Box P O Box 111  
Status  
 Signed       Bad       Nothing  
comments

---

Company Name/last Name Lazy Two- T Ranch

First Name  
Street/po Box 1363 Laurel Avenue  
Status  
 Signed       Bad       Nothing  
comments      out of busines in 1970; Frank M. Tunzi died 7/26/91

---

Company Name/last Name Livingston

First Name George

Street/po Box Box 50, Pine Nut Road

Status Coleville Town CA 96107

Signed State Zip

Bad

Nothing comments

---

Company Name/last Name Livingston

First Name Lor I

Street/po Box Box 50, Pine Nut Road

Status Coleville Town CA 96107

Signed State Zip

Bad

Nothing comments

---

Company Name/last Name Los Angeles, Ca 9005  
United States Of America

First Name Bureau Of Indian Affairs

Street/po Box 1667 Hot Springs Road

Status Carson City Town NV 89706

Signed State Zip

Bad

Nothing comments by Robert Houter

---

Company Name/last Name Ludel

First Name Samuel M.

Street/po Box 8 Mackenzie Lane

Status Yerington Town NV 89447

Signed State Zip

Bad

Nothing comments

---

Company Name/last Name  Madsen  
First Name  Donna L  
Street/po Box  8 Mackenzie Lane  
Status  Signed  Bad  Nothing  
 Signed  Bad  Nothing      comments

---

Company Name/last Name  Madsen

First Name  Vernon Lee  
Street/po Box  2925 Lakewood Court  
Status  Signed  Bad  Nothing  
 Signed  Bad  Nothing      comments

---

Company Name/last Name  Madsen

First Name  Patricia G.  
Street/po Box  2925 Lakewood Court  
Status  Signed  Bad  Nothing  
 Signed  Bad  Nothing      comments

---

Company Name/last Name  Maine

First Name  D. C.  
Street/po Box  226 Highway 95 A North  
Status  Signed  Bad  Nothing  
 Signed  Bad  Nothing      comments

---

Company Name/last Name Masini  
First Name Gayle  
Street/po Box 226 Highway 95 A North  
Status Yerington NV 89447  
 Signed Town State Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Masini

First Name Carrol G.  
Street/po Box 230 Highway 208  
Status Yerington NV 89447  
 Signed Town State Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Masini

First Name Maria O.  
Street/po Box 230 Highway 208  
Status Yerington NV 89447  
 Signed Town State Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Mattice

First Name Mary L.  
Street/po Box #81 Hwy 95 A East  
Status Yerington NV 89447  
 Signed Town State Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Mc Cargar

First Name Doris  
Street/po Box 689 Highway 208  
Status NV 89447  
 Signed Town Yerington  
 Bad State Zip  
 Nothing comments signed by Edward J. McCargar, Jr.

---

Company Name/last Name Mc Cargar

First Name Edward J., Jr.  
Street/po Box 689 Highway 208  
Status NV 89447  
 Signed Town Yerington  
 Bad State Zip  
 Nothing comments

---

Company Name/last Name Mc Clain

First Name William T  
Street/po Box 1636 Carval Court  
Status NV 89423  
 Signed Town Minden  
 Bad State Zip  
 Nothing comments

---

Company Name/last Name Mc Clain

First Name Terry Lee  
Street/po Box 1636 Carval Court  
Status NV 89423  
 Signed Town Minden  
 Bad State Zip  
 Nothing comments

---

Company Name/last Name Bayer  
First Name Albert  
Street/po Box 179 Pas Pajaros  
Status  Signed  Bad  Nothing  
**comments** by Mildred Bayer  
Town Sonoma State CA Zip 95476

---

Company Name/last Name Blackham Trust

First Name Craig Blackham  
Street/po Box 167 Highway 208  
Status  Signed  Bad  Nothing  
**comments**  
Town Yerington State NV Zip 89447

---

Company Name/last Name Blackham Trust

First Name Nancy Blackham  
Street/po Box 167 Highway 208  
Status  Signed  Bad  Nothing  
**comments**  
Town Yerington State NV Zip 89447

---

Company Name/last Name Bobzien

First Name Dolores J  
Street/po Box P O Box 598  
Status  Signed  Bad  Nothing  
**comments**  
Town Yerington State NV Zip 89447

---

First Name

Street/po Box

P. O. Box 507

Status

Signed

Bad

Nothing comments

Littlerock

CA 93543

Town

State

Zip

Company Name/last Name Bradleyville

First Name

C/o Dan Olincy

Street/po Box

10960 Wilshire Blvd., #820

Status

Signed

Bad

Nothing comments

Los Angeles

CA 90024

Town

State

Zip

Company Name/last Name Brown

First Name

Darrol J

Street/po Box

P O Box 834

Status

Signed

Bad

Nothing comments D & S Waste Removal, Inc.

Yerington

NV 89447

Town

State

Zip

Company Name/last Name Brown

First Name

Marilyn M.

Street/po Box

P O Box 834

Status

Signed

Bad

Nothing comments

Yerington

NV 89447

Town

State

Zip

Company Name/last Name Brown

First Name Ross

Street/po Box 14 North Hwy 95 A

Status Yerington NV 89447

Signed  
 Bad  
 Nothing

comments

---

Company Name/last Name Crystal

First Name Dennis C.

Street/po Box 9 Mason Road

Status Yerington NV 89447

Signed  
 Bad  
 Nothing

comments sold parcel #2 Aug. 17, 1994 to Robert & Janna Patterson; sold parcel #2 Apr. 17, 1995 to Edwin F. & M. Faria

---

Company Name/last Name Crystal

First Name Mary I.

Street/po Box 9 Mason Road

Status Yerington NV 89447

Signed  
 Bad  
 Nothing

comments see comments for Dennis C. Crystal

---

Company Name/last Name Curry

First Name Robert R

Street/po Box P O Box 770

Status Soquel CA 95073-0070

Signed  
 Bad  
 Nothing

comments

---

Company Name/last Name DeLuca  
First Name Kenneth T  
Street/po Box 1332 Francisco Street  
Status San Francisco CA 94123  
 Signed Town Zip  
 Bad  
 Nothing comments

---

Company Name/last Name E L W Ranches Inc

First Name  
Street/po Box 165 W Liberty  
Status Reno NV 89501  
 Signed Town Zip  
 Bad  
 Nothing comments by Michael J. Melarkey

---

Company Name/last Name Fickes

First Name Gerald L  
Street/po Box Walker Route 1  
Status Coleville CA 96107  
 Signed Town Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Fickes

First Name Peggy L  
Street/po Box Walker Route 1  
Status Coleville CA 96107  
 Signed Town Zip  
 Bad  
 Nothing comments

---

First Name

Street/po Box P O Box 487

Status Pendleton

OR 97801

Signed

Town

State

Zip

Bad

comments Bryce G. Mitchell

Nothing

---

Company Name/last Name Frazier

First Name

George R

Street/po Box

972 Haystack Ct

Status Carson City

NV 89705

Signed

Town

State

Zip

Bad

Nothing

comments

---

Company Name/last Name Frazier

First Name

Helen

Street/po Box

972 Haystack Ct

Status Carson City

NV 89705

Signed

Town

State

Zip

Bad

Nothing

comments

---

Company Name/last Name Gingras

First Name

Opal Edith

Street/po Box

1121 Nut Tree Lane

Status Modesto

CA 95355

Signed

Town

State

Zip

Bad

Nothing

comments

Company Name/last Name Giodo  
First Name Virginia M.  
Street/po Box 1009 F Street  
Status Signed Sparks NV 89431  
 Signed  Bad  Nothing  
Comments signed by Anna Nannini (V. Giold deceased 2/88)

---

Company Name/last Name Glasner

First Name Grover F  
Street/po Box 10 Amber Lane  
Status Signed Yerington NV 89447  
 Signed  Bad  Nothing  
Comments

---

Company Name/last Name Goes

First Name Frank  
Street/po Box 611 White Road  
Status Signed Watsonville CA 95076  
 Signed  Bad  Nothing  
Comments

---

Company Name/last Name Goes

First Name Cheryl  
Street/po Box 611 White Road  
Status Signed Watsonville CA 95076  
 Signed  Bad  Nothing  
Comments

---

Company Name/last Name Goodman

First Name Emma M

Street/po Box 137 Burke Drive

Status Wellington NV 89444

Signed       Bad       Nothing      comments

Town State Zip

---

Company Name/last Name Gray

First Name Mary

Street/po Box 3540 Wedekind Road

Status Sparks NV 89431

Signed       Bad       Nothing      comments

Town State Zip

---

Company Name/last Name Gray

First Name Leslie

Street/po Box 3540 Wedekind Road

Status Sparks NV 89431

Signed       Bad       Nothing      comments

Town State Zip

---

Company Name/last Name Hall Trust

First Name Blanche F

Street/po Box 385 Circlewood

Status Paradise CA 95969

Signed       Bad       Nothing      comments

Town State Zip

---

1      Mr. Hanson had changed his address to P.O. Box 840, Yerington, NV more than two (2)  
2 years ago. The U.S. Postal Service has strict rules on forwarding (see Exhibit 1).

3              7. Beginning on April 14, 1995 and ending on May 26, 1995. a total of  
4 one hundred and twenty-eight (128) Waivers of Service had been returned (see Exhibit 2).

5              Fifty-six (56) of the waivers were returned between April 14, 1995 and April  
6 20, 1995. These 56 waivers were all postmarked on or before April 18, 1995 and were for  
7 the most part from the Yerington Post Office.

8              In addition to the returns, we had several helpful calls from individuals as the  
9 status of their water rights. A number of individuals had sold their property and called to  
10 give the address of the new owner. In some cases, the address that the Waiver was sent to  
11 was no longer current and we had calls informing us as to the new address.

12              On April 21, 1995, the number of returns dropped to two (2) and continued to  
13 come in at a rate of one or two a day for a week, dropped to zero for a few days until some  
14 out-of-state packets were received. From April 22, 1995, until the last Waiver was received  
15 on May 26, the balance of the returned waivers were returns generated from outside the State  
16 of Nevada and were mostly state and federal agencies or corporations. An example was  
17 Baron Hilton who returned six (6) Waivers.

18              We received only one query regarding service after April 21, 1995. A defunct  
19 corporation in California was still on the WRID mailing list as having owned water rights.  
20 The corporation was not active since 1987.

21              8. I have tabulated the direct copying and other costs incurred by Mineral  
22 County for distribution of this Waiver of Service billed form this office. Copying and  
23 printing costs done at Commercial Printers totaled approximately \$4,278.00. In-house  
24 copying costs totaled approximately \$522.00. Mineral County may have incurred additional  
25  
26  
27  
28

Company Name/last Name Radioc  
First Name William S., Trustee  
Street/po Box 20 Bum Steer Road  
Status NV 89447  
 Signed Town  
 Bad State  
 Nothing Zip  
comments

---

Company Name/last Name Richardson

First Name Elizabeth  
Street/po Box P O Box 598  
Status NV 89447  
 Signed Town  
 Bad State  
 Nothing Zip  
comments

---

Company Name/last Name Roma Corporation

First Name  
Street/po Box 617 South Center Street  
Status NV 89447  
 Signed Yerington Town  
 Bad State  
 Nothing Zip  
comments signed by Mary Ann Insantino

---

Company Name/last Name Shively 1991 Revocable Trust

First Name C/o Russelle Shively, Trustee  
Street/po Box 1365 E. Yosemite Ave.  
Status CA 95340  
 Signed Merced Town  
 Bad State  
 Nothing Zip  
comments

---

Company Name/last Name Shively 1991 Revocable Trust  
First Name C/o E. Duane Shively, Trustee  
Street/po Box 1365 E. Yosemite Ave.  
Status Merced Town CA 95340  
 Signed State Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Silva

First Name Dorthella A.  
Street/po Box P O Box 307  
Status Yerington Town NV 89447  
 Signed State Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Singer

First Name Steve  
Street/po Box 5 Oanavista Cr  
Status Yerington Town NV 89447  
 Signed State Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Smith

First Name Keith A.  
Street/po Box P O Box 305  
Status Yerington Town NV 89447  
 Signed State Zip  
 Bad  
 Nothing comments

---

First Name

Frances

Street/po Box

#12 Rio Vista

Status

Signed

Bad

Nothing comments

Yerington

NV 89447

Town

State

Zip

Company Name/last Name Stevens

First Name

Ronald Lynn

Street/po Box

5 Del Oro Lagoon

Status

Signed

Bad

Nothing comments

Novato

CA 94949

Town

State

Zip

Company Name/last Name Stout

First Name

Jack F

Street/po Box

19 Sierra East

Status

Signed

Bad

Nothing comments

Coleville

CA 96107

Town

State

Zip

Company Name/last Name Stout

First Name

Nancy

Street/po Box

19 Sierra East

Status

Signed

Bad

Nothing comments

Coleville

CA 96107

Town

State

Zip

Company Name/last Name Strong

First Name

Charles W

Street/po Box

U. S. 395, Box 126

Status

Signed

Bad

Nothing

comments

Coleville

CA 96107

Town

State

Zip

Company Name/last Name Taber

First Name

Phyllis B.

Street/po Box

908 Javan Way

Status

Signed

Bad

Nothing

comments

Suisun City

CA 94585

Town

State

Zip

Company Name/last Name Talbott Land & Livestock

First Name

Street/po Box

2236 Sunrise Dr.

Status

Signed

Bad

Nothing

comments by Thomas J. Talbot

Bishop

CA 93514

Town

State

Zip

Company Name/last Name Taylor

First Name

Mary M.

Street/po Box

P O Box 33

Status

Signed

Bad

Nothing

Yerington

NV 89447

Town

State

Zip

sold to Dave & Carol Hills, PO Box 267, Yerington 89447; phone 463-4521

comments

Company Name/last Name Thom

First Name May

Street/po Box 1280 Highway 208

Status Yerington NV 89447

Signed      Town      State      Zip

Bad

Nothing      comments

---

Company Name/last Name Thom

First Name Douglas

Street/po Box 1280 Highway 208

Status Yerington NV 89447

Signed      Town      State      Zip

Bad

Nothing      comments

---

Company Name/last Name Thomas

First Name Jim R.

Street/po Box 1536 Bear Creek Drive

Status Bishop CA 93514

Signed      Town      State      Zip

Bad

Nothing      comments

---

Company Name/last Name Thomas

First Name Katherine L

Street/po Box 519 Highway 208

Status Yerington NV 89447

Signed      Town      State      Zip

Bad

Nothing      comments

---

Company Name/last Name Tomac

First Name Steve  
Street/po Box 39 Panavista

Status Yerington NV 89447  
 Signed Town State Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Tomac

First Name Laura  
Street/po Box 39 Panavista

Status Yerington NV 89447  
 Signed Town State Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Valdex

First Name Ramon  
Street/po Box 163 Francisco Street

Status El Granada CA 94018-0070  
 Signed Town State Zip  
 Bad  
 Nothing comments

---

Company Name/last Name Valdez

First Name Myrna  
Street/po Box 163 Francisco Street

Status El Granada CA 94018-0070  
 Signed Town State Zip  
 Bad  
 Nothing comments

---

First Name

Vernon

Street/po Box

Rte 1 Box 125 Hwy 395

Status

Signed

Bad

Nothing

comments

Town

CA 96107

State

Zip

Company Name/last Name Vandebrake

First Name

Audrey

Street/po Box

Route 1 Box 125 Hwy 395

Status

Signed

Bad

Nothing

comments

Town

CA 96107

State

Zip

Company Name/last Name Veuve

First Name

Mary R.

Street/po Box

3816 Teek Court

Status

Signed

Bad

Nothing

comments

Town

CA 95307

State

Zip

Company Name/last Name Watkins

First Name

Louis H

Street/po Box

10735 Tuxford Street

Status

Signed

Bad

Nothing

comments

Town

CA 91352

State

Zip

Company Name/last Name Williams

First Name Kenneth & Elizabeth Trust

Street/po Box 1768 Esteban Avenue

Status Laughlin NV 89029

Signed       Bad       Nothing      comments

Town State Zip

---

Company Name/last Name Williams

First Name E. M. Trustee

Street/po Box 26465 Carmel Rancho Blvd.

Status Carmel CA 93923

Signed       Bad       Nothing      comments Elizabeth?

Town State Zip

---

Company Name/last Name Williams Trust

First Name Durell & Virginia

Street/po Box H C 64, Box 132

Status Lakeview OR 97630

Signed       Bad       Nothing      comments

Town State Zip

---

Company Name/last Name Woodward

First Name Carol

Street/po Box 17 Panavista Circle

Status Yerington NV 89447

Signed       Bad       Nothing      comments

Town State Zip

---

First Name

Robert L

Street/po Box

P O Box 116

Status

Signed

Bad

Nothing

Bridgeport

CA 93517

Town

State

Zip

comments no longer there

Company Name/last Name Mc Colloch

First Name

Pamela

Street/po Box

P O Box 116

Status

Signed

Bad

Nothing

Bridgeport

CA 93517

Town

State

Zip

comments no longer there

Company Name/last Name Minister

First Name

Rose Alice

Street/po Box

55 East Tognoli Lane

Status

Signed

Bad

Nothing

Yerington

NV 89447

Town

State

Zip

comments

Company Name/last Name Moorehead

First Name

Emma M S. P. Trust, Trustee

Street/po Box

137 Burke Drive

Status

Signed

Bad

Nothing

Wellington

NV 89444

Town

State

Zip

comments

Company Name/last Name Moorehead

First Name S. F.

Street/po Box 137 Burke Drive

Status Wellington NV 89444

Signed      Town

Bad      State

Nothing      Zip

comments

---

Company Name/last Name Mortimore

First Name Craig

Street/po Box 44 Hatchery Way

Status Yerington NV 89447

Signed      Town

Bad      State

Nothing      Zip

comments

---

Company Name/last Name Nannini

First Name Guido

Street/po Box 1009 F Street

Status Sparks NV 89431

Signed      Town

Bad      State

Nothing      Zip

comments by Anna Nannini (G. Nannini deceased 12/23/87)

---

Company Name/last Name Nannini

First Name Anna

Street/po Box 1009 F Street

Status Sparks NV 89431

Signed      Town

Bad      State

Nothing      Zip

comments

---

First Name Geneva Ruth  
Street/po Box P O Box 3872  
Status Tonopah NV 89049  
 Signed  
 Bad  
 Nothing comments

---

Company Name/last Name Neuhauser

First Name Larry  
Street/po Box P O Box 3872  
Status Tonopah NV 89049  
 Signed  
 Bad  
 Nothing comments signed by Geneva Ruth Neuhauser

---

Company Name/last Name Nevada- Utah Association Of  
Seventh Day Adventists

First Name  
Street/po Box P O Box 10730  
Status Reno NV 89510  
 Signed  
 Bad  
 Nothing comments signed by Ken Ladd

---

Company Name/last Name Nevin

First Name Wilbur W  
Street/po Box 20 Palomino Drive  
Status Yerington NV 89447  
 Signed  
 Bad  
 Nothing comments

---

First Name

Melba

Street/po Box

20 Palomino Drive

Status

Signed

Bad

Nothing

Yerington

NV 89447

Town

State

Zip

comments

---

Company Name/last Name Parker

First Name

Raymond E.

Street/po Box

2025 French Camp Circle

Gold River

CA 95670

Town

State

Zip

Status

Signed

Bad

Nothing

comments

---

Company Name/last Name Parker

First Name

Patricia

Street/po Box

2025 French Camp Circle

Gold River

CA 95670

Town

State

Zip

Status

Signed

Bad

Nothing

comments

---

Company Name/last Name Peeples

First Name

Frank Terry

Street/po Box

141 N Highway 95 A

Yerington

NV 89447

Town

State

Zip

Status

Signed

Bad

Nothing

comments

---

Company Name/last Name Peeples

First Name Frank Terry  
Street/po Box 1717 Klamath River Road  
Status Rancho Cordova      Town CA 95670  
 Signed      State Zip  
 Bad  
 Nothing      comments

---

Company Name/last Name Pellegrini

First Name Steven W.  
Street/po Box 76 Tognoli Lane  
Status Yerington      Town NV 89447  
 Signed      State Zip  
 Bad  
 Nothing      comments

---

Company Name/last Name Pellegrini

First Name Debra  
Street/po Box 76 Tognoli Lane  
Status Yerington      Town NV 89447  
 Signed      State Zip  
 Bad  
 Nothing      comments

---

Company Name/last Name Perriseau

First Name Melvin  
Street/po Box P O Box 464  
Status Bridgeport      Town CA 93517  
 Signed      State Zip  
 Bad  
 Nothing      comments

---

Company Name/last Name Phillips

First Name Richard L.

Street/po Box 29 Maple Drive

Status Yerington NV 89447

Signed  
 Bad  
 Nothing

comments

---

Company Name/last Name Phillips

First Name Joan F.

Street/po Box 29 Maple Drive

Status Yerington NV 89447

Signed  
 Bad  
 Nothing

comments

---

Company Name/last Name Polish

First Name Evelyn

Street/po Box 33 Smith Gage Road

Status Smith NV 89430

Signed  
 Bad  
 Nothing

comments

---

Company Name/last Name R & R Services

First Name

Street/po Box P O Box 507

Status Yerington NV 89447

Signed  
 Bad  
 Nothing

comments Robert Rupracht

---

**AFFIDAVIT OF LOUIS D. THOMPSON**

I, Louis D. Thompson, being duly sworn, state that:

1. I am Chairman of the Walker Lake Working Group and a resident of Mineral County.

2. I, with the assistance of Glen Bunch, Marlene Bunch, Jeri Bunch, Byrle Curry, Kaye Manes, Joe Mulcahy, James Scott, Shirley Thompson, Phil Cammarata, Ciera Cammarata, Earl Milsiewsky, and Dave Womack, did spend a total of 201 hours packaging, addressing, and mailing twelve hundred forty-eight (1,248) Personal Waivers of Service on behalf of Mineral County.

3. I, Glen Bunch, Marlene Bunch, and Shirley Thompson made trips to the State Engineers office in Carson City for research of water rights holders and to Reno on three occasions to pick up over 400 pounds of Waivers of Service.

4. I personally received a copy of the Walker River Users Group newsletter, the Walker River Advocate, May 1995, Volume II, in which it advises respondents not to return the waiver of personal service (Exhibit 1).

5. I personally received a copy of a WRID notice dated April 14, 1995 and a second WRID notice dated May 2, 1995, both of which stated that respondents were not required to return the Waiver of Personal Service and requested that they not return it (Exhibit 2).

6. I have personally calculated the costs involved with the mailing of Waiver of Service, which are as follows:

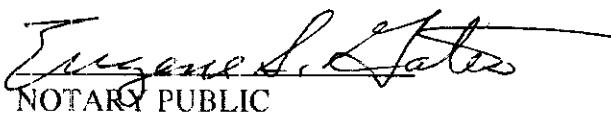
Mailing	201 hours @ \$12.00	\$ 2,412.00
Mileage	Hawthorne-Reno 280 miles Hawthorne-Reno 280 miles Mina -Reno 330 miles Mina-Carson City 300 miles	
	Total 1190 miles @ \$0.26	\$ 309.40
Postage		\$ 2,629.74
	Total	\$ 5,351.14

Further Affiant sayth not.

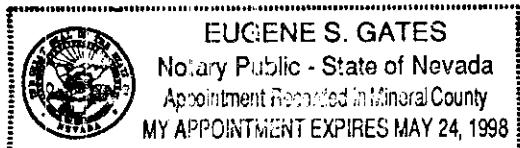


LOUIS D. THOMPSON

SUBSCRIBED and SWORN to before me  
this 29 day of June, 1995 by  
LOUIS D. THOMPSON



EUGENE S. GATES  
NOTARY PUBLIC



**WALKER RIVER IRRIGATION DISTRICT**

P.O. Box 820  
Yerington, NV 89447

(702) 463-3523

May 2, 1995

**NOTICE TO ALL WATER RIGHT HOLDERS  
CONCERNING MOTION TO INTERVENE OF MINERAL COUNTY IN  
UNITED STATES OF AMERICA, PLAINTIFF, WALKER RIVER PAJUTE TRIBE,  
PLAINTIFF-INTERVENOR, VS. WALKER RIVER IRRIGATION DISTRICT, ET  
AL., DEFENDANTS, IN EQUITY NO. C-125-ECR, SUBFILE C-125-C**

This Notice Regarding Waiver of Personal Service follows the previous Notice of April 14, 1995.

You have received a mailing from attorneys for Mineral County concerning a Motion to Intervene, Proposed Complaint-in-Intervention and Motion for Preliminary Injunction by Mineral County, Nevada, claiming a right to a minimum level of water for Walker Lake which may affect water rights in the Walker River which you own. The materials include a request that you sign and return a Waiver of Personal Service of the documents involving the Motion to Intervene.

**IT IS REQUESTED THAT YOU NOT RETURN THE WAIVER OF PERSONAL SERVICE.** Counsel for the Walker River Irrigation District believes that there is a serious defect in Mineral County's mailing. Returning the Waiver is likely to cure that defect and adversely affect your rights.

At this time, it is the judgment of counsel for the Irrigation District that it is not in your best interest to return the waiver of personal service. However, if the judgment of the Irrigation District's counsel is later found to be incorrect by the Court, you might be required to bear the cost which Mineral County incurs in personally delivering documents to you. Therefore you may wish to consult with your personal attorney on this matter. If you do, please ask that attorney to contact the Irrigation District's or Water Users Association's attorneys concerning this matter. The Irrigation District's attorneys are Gordon H. DePaoli and Dale Ferguson and their phone number is (702) 688-3000. The Water Users Association's attorneys are Stuart Somach and Don Gilbert and their phone number is (916) 446-7979.

Until you are personally delivered all documents which the Court's February 9, 1995 order requires you receive or until you return a waiver of personal service, you are not required to respond to any of the documents mailed to you by Mineral County's Attorneys. There is a July 11, 1995 deadline for persons who have returned a waiver of personal service to respond to Mineral County's Motion to Intervene. However, in light of the defects in Mineral County's mailing, the Irrigation District may seek to have that date changed until such time as service is completed as required by the Court's order of February 9, 1995. The District and/or the Water Users Association will continue to keep you informed about the status of this matter.

# WALKER RIVER ADVOCATE

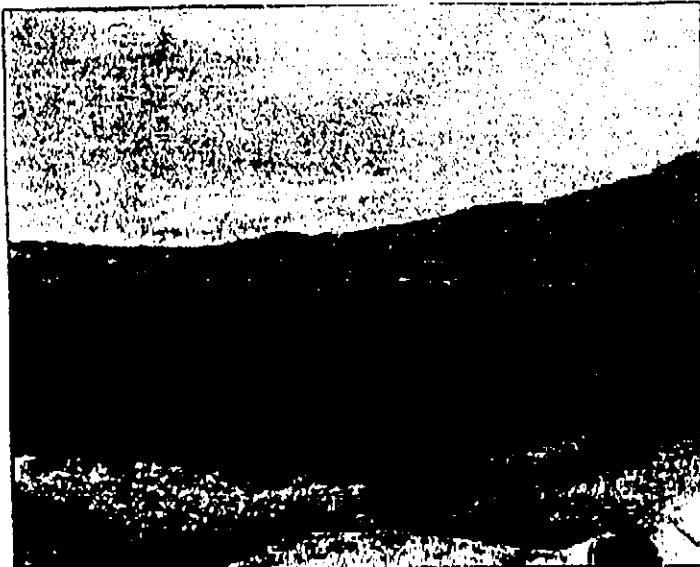
Volume II Official Walker River Water Users Association Publication May 1995

## MORE GOVERNMENT INTERVENTION

Decades ago, hard working pioneers with a vision for the future put their earnings and elbow grease together to build a dream. It began with the construction of several dams: Topaz, Bridgeport, Twin Lakes, Green Lakes, Virginia Lakes, Poore Lake and other smaller opportune natural places to store the erratic and unpredictable runoff. The idea was to provide generations to come with water for agriculture and recreation, at the sole expense of those who would use the resources.

Today the dreams of our forefathers (and your water rights) as well as potential damage to the upper and middle sections of the

*Continued on Page 2...*



*The Walker River provides for many*

### Inside...

- |  |        |
|--|--------|
| Meet the attorneys<br>who represent the<br>users.....    | Page 4 |
| The board members<br>who work hard for<br>the users..... | Page 2 |
| A statement of<br>purpose.....                           | Page 4 |

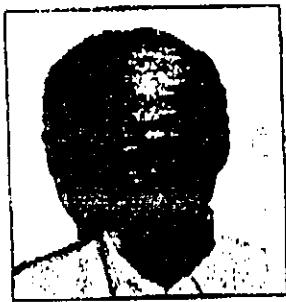
### Meet the Walker River Basin Water Users Association Board Members

The Walker River Basin Water Users Association was established to protect and/or defend the water rights of water users along the Walker River system. The board members were appointed by the Walker River Irrigation District and the Bridgeport Valley Land Owners Association. They volunteer their time for the cause, spending approximately six to ten hours a month in bi-monthly meetings.

*Continued on Page 2.*

*Continued from page one...*

Jeff Honewill is a cattle rancher and farmer in Smith Valley and Bridgeport Valley. He is a Ranch owner/operator in Bridgeport Valley. He represents Bridgeport Valley Land Owners Association and has been appointed Director of the East Walker River Division in Bridgeport Valley.

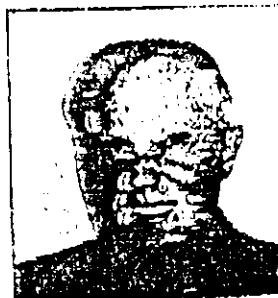
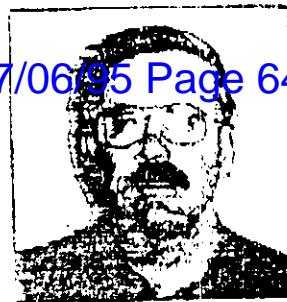


Pete Fenili is a cattle rancher and farmer in Smith Valley and Feed Lot owner/operator. He is a Walker River Irrigation District Board of Directors Representative for the West Walker River Division in Smith Valley.



Ed Snyder is a farmer in Mason Valley and Feed Lot owner/operator. He is an appointed member of the Walker River Irrigation District representing the East Walker River in Mason Valley.

Tom Connolly is a cattle rancher and farmer in Mason Valley. He is an appointed member of the Walker River Irrigation District representing the Main Walker River in Mason Valley.



Richard Fulstone is a cattle rancher and farmer in Smith Valley, Mason Valley and Bridgeport Valley, and Feed Lot owner/operator. He represents the Bridgeport Valley Land Owners Association and has been appointed Director of the East Walker River Division in Bridgeport Valley.

## Don't Forget!

The Annual Walker River Water Users Association Meeting

May 11, 1995 at 6:30 PM

Seating of Directors and  
Election of Officers

*Continued from page one...*

Walker River ecosystems are being threatened by Mineral County and the Walker River Paiute Tribe.

The agreement that governs your water rights is Federal Decree C-123. It was issued in 1936 by the Federal District Court for the District of Nevada, and it determines the water rights of most water right holders on the Walker River system.

Mineral County has already begun the attack, even though they are not even a party to the Decree. They have started by filing a motion to intervene and

will follow that by a motion for preliminary injunction. This means they will ask the Court to allow them to gain party status without the consent of the original parties (the upstream water users) based primarily on allegations that Walker Lake is entirely within Mineral County, that Walker Lake and its fisheries are mortally threatened by upstream diversions, and that Mineral County is the only entity that will protect Walker Lake. From there they will ask the court to order Walker River water users to reduce their diversions and to allow more

*Continued on page three...*

*Continued from page two...*

## Case 3:73-cv-00128-MMD-CSD Document 31 Filed 07/06/95 Page 65 of 75

water to flow to Walker Lake. They want the Court to impose a permanent solution to Walker Lake's problems; a solution that will require a dramatic increase in the flow of water from Walker River to Walker Lake.

Recently, you were served by mail with a Motion to Intervene along with supporting documents, a Motion for Preliminary Injunction with supporting documents, a Proposed Complaint-in-Intervention, and a Waiver of Personal Service for the documents that were served. You have thirty (30) days from the date the documents were mailed to you to return the Waiver of Personal Service. **DO NOT RETURN THE WAIVER OF PERSONAL SERVICE UNTIL YOU HEAR FROM THE WALKER RIVER WATER USERS ASSOCIATION!**

Don Gilbert of De Cuir & Somach in Sacramento, California, attorneys for the Walker River Basin Water Users Association explains, "It appears that there is a serious defect in Mineral County's mailing," claims Gilbert. "Returning the Waiver of Personal Services may cure the defect and adversely affect your rights. Therefore, do not return the Waiver of Personal Service until we provide you with more information concerning this matter." If the Water Users Association has not already contacted you with specific suggestions regarding the handling of this matter, you can expect to hear from them soon.

The Court has already ordered the Water Users to serve an opposition brief to Mineral County's Motion to Intervene (and it's supporting documents) by July 11, 1995. Mineral County must file and serve a reply brief to that opposition by September 11, 1995. Then, at a future date, the Court will decide if and when we must file legal documents responding to Mineral County's Proposed Complaint-In-Intervention and Motion for Preliminary Injunction. All of these legal maneuvers are being closely observed by the attorneys at De Cuir & Somach, as each one is a step closer to the loss of your valuable water entitlements. The attorneys will inform you if and

when such documents must be filed.

If Mineral County wins its first battle and is permitted by the Court to become a party to the Decree, their second campaign will begin, and the Court will entertain their Motion for Preliminary Injunction. According to Don Gilbert, that motion seeks "emergency" flows from Walker River to Walker Lake in the following quantities: 260,000 af in 1995, 240,000 in 1996, and 127,000 af each year thereafter until a permanent solution is imposed. This motion is supported by declarations of experts who assert that the fishery is dying. In addition, Mineral County will argue that such environmental injury is irreparable and therefore warrants an emergency supply of water from Walker River.

As if this weren't enough to drive a farmer or rancher stark raving mad, we must keep in mind the needs of the other users, including the Walker River Paiute Tribe.

While all this has been going on, the Court has granted the Tribe's request to push back the deadline for filing and serving its legal documents from March 25, 1995 to September 22, 1995. So prepare yourself and watch your mail to be served by the Tribe on or around that date. Again, when the time comes, the Walker River Basin Water Users Association will provide suggestions for han-



*Here, water flows rapidly through the Walker River.*

dling the Tribe's motion.

Decades ago the water rights were established and today the Water Users have felt the crunch of less water. From 1990 to 1992, farm income was down 17 percent due to the drought. If the onslaught of pilfering water from the Walker River to new interests is successful, it could mean the demise of rural life as we know it. The Walker River Basin Water Users Association needs the strength of all upstream water users, from Smith Valley and Mason Valley, to Bridgeport Valley and Antelope Valley. Please call the Association at (702) 463-3523 to join. If you wish to become involved on an individual basis contact Don Gilbert, the attorney working on the rights of the users.

# OUR COUNSEL'S BACKGROUNDS

Case 3:73-cv-00128-MMD-CSD Document 31 Filed 07/06/95 Page 66 of 75

## DONALD R. GILBERT

Mr. Gilbert joined De Cuir & Somach as an associate attorney in August 1992. A graduate of Hastings College of the Law, Mr. Gilbert was admitted to the State Bar of California in 1990 and formerly practiced at Bronson, Bronson & McKinnon, San Francisco, in the areas of commercial litigation and real estate litigation.



Since joining De Cuir & Somach, Mr. Gilbert's practice areas include water law, public law, the California Environmen-

tal Quality Act (CEQA), National Environmental Policy Act (NEPA), hazardous waste law, and general counsel work.

## STUART L. SOMACH

Mr. Somach is an Attorney-Shareholder with the Sacramento law firm of De Cuir & Somach. He is a former attorney with the United States

Department of the Interior. He also served as an Assistant United States Attorney and Senior Trial Attorney, United States Department of Justice. Mr. Somach entered private practice in 1984, and now specializes in water rights and water quality law, natural resource and environmental law, as well as litigation in federal and state court. He has



taught water rights courses and is an Adjunct Professor of Law at the University of the Pacific McGeorge School of Law.

Mr. Somach has authored numerous law review articles in the area of water rights, and is the former Chairman of the American Bar Association's Committee on Water Resources Law.

## United We Stand

Strength comes in numbers. We've all heard the expression. The Walker River Basin Water Users Association is no exception. The Association is working to protect the water rights of its members who are water users on the Walker River System. We intend to defend, to a solution, the legal right of our members to exercise their respective water rights in full. This includes pursuing legal defenses against Mineral County's and the Walker River Paiute Tribe's motions.

Moreover, the Water Users Association is working on a comprehensive plan to resolve the issues concerning Walker River and Walker Lake. These issues include (1) the protection of existing water rights, (2) the recreational needs of Walker Lake, (3) the Tribe's claims to additional water, and (4) the allocation of water between Nevada and California. The Water Users Association believes that the final resolution to the issues is a plan that will protect the rights of the individual, allow them to make voluntary decision on those rights, and to provide an integrated water management mechanism whereby the water right holder and other stakeholders along the Walker River System can continue to provide the necessary food and fiber as well as satisfy the other interest as our nation continues to grow.

By taking a unified position we, the water users, will maximize our influence on the legal process and minimize any negative impact on our individual water rights. If you are not yet a member of the Walker River Basin Water Users Association, please join us by contacting the Association at (702) 463-3523, or the attorney, Don Gilbert of De Cuir & Somach can be reached at (916) 446-7979.

Walker River Water Users Association  
P.O. Box 478  
Yerington, NV 89447

FIRST CLASS  
U.S. POSTAGE PAID  
RENO, NV  
PERMIT #867

**WALKER RIVER IRRIGATION DISTRICT**

P. O. Box 820  
Yerington, NV 89447

(702) 463-3523

April 14, 1995

**NOTICE TO ALL WATER RIGHT HOLDERS  
CONCERNING MOTION TO INTERVENE OF MINERAL COUNTY IN  
UNITED STATES OF AMERICA, PLAINTIFF, WALKER RIVER PAIUTE TRIBE,  
PLAINTIFF-INTERVENOR, VS. WALKER RIVER IRRIGATION DISTRICT, ET  
AL., DEFENDANTS, IN EQUITY NO. C-125-ECR, SUBFILE C-125-C**

You may have already received or you will shortly receive a mailing from attorneys for Mineral County concerning a Motion to Intervene, Proposed Complaint-in-Intervention and Motion for Preliminary Injunction by Mineral County, Nevada, claiming a right to a minimum level of water for Walker Lake which may affect water rights in the Walker River which you own. The materials include a request that you sign and return a Waiver of Personal Service of the documents involving the Motion to Intervene.

You have thirty (30) days from the date the material was mailed to you in which to decide to return the Waiver of Personal Service. You should retain the envelope in which the material came to you because the date of mailing is the date which starts the thirty (30) day period for making a decision concerning the Waiver.

You are not required to return the Waiver of Personal Service. **AT THIS TIME, IT IS REQUESTED THAT YOU NOT RETURN THE WAIVER OF PERSONAL SERVICE.** Counsel for the Walker River Irrigation District and counsel for the Walker River Basin Water Users Association ("Water Users Association") are researching the question of whether you should return the Waiver of Service. It appears that there is a serious defect in Mineral County's mailing. Returning the Waiver might cure that defect and adversely affect your rights. Additional information will be provided to you concerning this matter by May 1, 1995.

You may also want to consult with your personal attorney on this matter. If you do, please ask that attorney to contact the Irrigation District's or Water Users Association's attorneys concerning this matter. The Irrigation District's attorneys are Gordon H. DePaoli and Dale Ferguson and their phone number is (702) 688-3000. The Water Users Association's attorneys are Stuart Somach and Don Gilbert and their phone number is (916) 446-7979.

General meetings are planned to discuss the details of the Petition. Notices will be provided to you.

A F F I D A V I T

STATE OF NEVADA            )  
                              ) SS  
COUNTY OF WASHOE          )

JAMES SPOO hereby affirms, under penalty of perjury, that the assertions of this affidavit are true;

1. That I am co-counsel to proposed Intervenor, Mineral County, Nevada;

2. The Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of Mineral County was jointly submitted by all counsel of record as a stipulated order, after substantive and cooperative conferral of all counsel including extensive redrafting by Gordon DePaoli, Esq. The contents thereof, including pertinent dates, documents to be served, method of service, responses to service, etc., were intended to cover fully the subject matter of the Order as set forth by the Court on January 3, 1995;

3. On and before April 26, 1995, I proposed to counsel of record herein, both verbally and in writing, that a stipulated letter be sent to the entire service list, as established by the Court, explaining, in general terms, the package with which each had been served, along with the options available to them, but not advising any particular course (Exhibit A). Such a letter was offered (Exhibit B). This effort was initiated because of the unexplained disruption in return of waivers of service which occurred shortly into the response period. My concern was that the response was clearly in difficulty and the persons served were possibly confused as to the meaning of the complex package received.

3. The response from some of the counsel of record was either favorable to such a letter or no response at all. From others, which were Gordon DePaoli, counsel to Walker River Irrigation District, and Susan Joseph-Taylor, counsel to State of Nevada, the response verbally and/or in writing was that no such letter should be sent because among other reasons, it would be providing legal advice to persons whom my office did not represent. I offered to avoid service to anyone with known counsel. (Exhibits C, D and E).

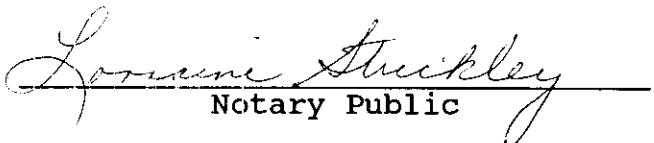
4. It now appears that my efforts to initiate such a letter, as an aid to persons being served, coincided with and confronted the efforts of WRID and others to totally frustrate service by Mineral County, by offering legal advice to all manner of persons being served, although Mineral County and its counsel were never directly informed of such effort.

FURTHER, AFFIANT SAYETH NAUGHT.

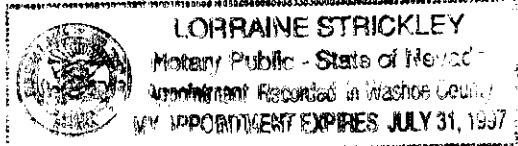


JAMES SPOO

Subscribed and sworn to before me  
this 20 day of June, 1995.



LORRAINE STRICKLEY  
Notary Public



Case 3:73-cv-00128-MMD-CSD Document 31 Filed 07/06/95 Page 70 of 75  
**ZEH, SPOO & ASSOCIATES**

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450 Marsh Avenue • Reno, Nevada 89509 • (702) 323-4599 • FAX (702) 786-8183

## **FACSIMILE COVER SHEET**

April 26, 1995

TO :	John Lange	FAX No. 303/294-1931
TO :	Scott McElroy	FAX No. 303/444-3490
TO :	David E. Moser	FAX No. 415/393-2286
TO :	Mary Hackenbracht	FAX No. 510/286-4020
TO :	Susan J. Taylor	FAX No. 702/687-5798
TO :	Linda Bowman	FAX No. 702/786-1177
TO :	Gordon H. DePaoli	FAX No. 702/688-3088
RE :	Walker River	
FROM:	James Spoo, Esq.	

# OF PAGES: 3 (Including this cover sheet)

MESSAGE (If any):

We propose to send attached reminder to all (1,170) to whom we mailed documents. Comments please ASAP. Thanks.

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL, OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND/OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENCY RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

Charles R. Zeh, Esq.\*  
James Spoo, Esq.\*\*  
Treva Hearne, Esq.\*\*\*

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Reno, Nevada 89509  
(702) 323-4599  
Fax: (702) 786-8183

\* Also admitted in Minnesota  
\*\* Also admitted in Washington, D.C.  
\*\*\*Also admitted in California and Missouri

April 26, 1995

To: Walker River Water Rights Holders  
Re: Legal Documents from Mineral County

Dear Madam or Sir:

You were recently served with legal documents on behalf of Mineral County Nevada, according to the Order of the U.S. District Court. You or your business or organization are listed as a water rights holder of some nature on the Walker River. These documents consist of Mineral County's efforts to become a legal party to the existing court case concerning the Walker River and to legally obtain water for Walker Lake.

If you object to Mineral County's efforts in this regard, you may formally respond, and seek advice of an attorney in so doing. The Order of the Court, included in the documents you have received, describes when you should respond.

Also included in the documents you have received are two forms called Waiver of Personal Service. At this point, whether you choose later to formally respond or not, Mineral County requests that you sign and return one of the Waiver of Personal Service forms in the return envelope by May 10, as indicated. This indicates only that you acknowledge that you have received the documents, and avoids Mineral County having to serve you with the documents in person and seeking to charge you for the personal service, as the Court rules allow. Signing and returning the Waiver of Personal Service does not otherwise affect your legal rights.

If there has been a change of ownership somehow of your water rights, or you believe you have been mistakenly served with the documents, please, if you choose, go ahead and sign and return the Waiver of Personal Service form, and include a note with any corrections you believe to be necessary.

Exhibit B

Miller River Water Right Holders

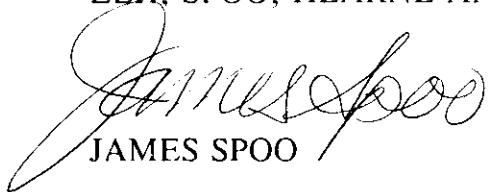
April 26, 1995

Page 2

If you have questions, you may wish to call an attorney. You may call our offices, but we cannot give you legal advice. Our numbers are: Treva Hearne (702) 786-4590 and James Spoo, (702) 323-4599. Thank you.

Sincerely,

ZEH, SPOO, HEARNE AND ASSOCIATES



JAMES SPOO

JS:th

VIRGIL H. WEDGE  
JAMES J. HALLEY  
RICHARD O. KWAPIL  
CASEY W. VLAUTIN  
GORDON D. PAPOLI  
SUellen Fulstone  
JOHN F. MURTHA  
JAMES W. ERBECK  
MICHAEL E. KARNEY  
W. CHRIS WICKER  
CHARLES A. JEANNIES  
SHAWN B. MEADOR  
KIRK S. SCHLUMACHER  
LYNNE K. JONES  
JOHNE E. LEACH  
MARRY J. SCHLEGELMILCH

WOODBURN AND WEDGE  
ATTORNEYS AND COUNSELORS AT LAW  
SIXTEENTH FLOOR  
FIRST INTERSTATE BANK BUILDING  
ONE EAST FIRST STREET  
PO BOX 2811  
RENO, NEVADA 89505  
(702) 688-3000  
FACSIMILE (702) 688-3088

DON L. ROSS  
ERIC W. LERUDE  
DAVID C. JOHNSON  
GREG P. BARNARD  
ANDREW J. DRIGGS  
TINA M. CHARTRAW  
MICHAEL L. WOLZ  
DALE E. PERCUSON  
RANDY A. DRAKE  
JAY R. HAMPTON  
NANCY L. MASTERS

April 27, 1995

SENT VIA FACSIMILE

James Spoo, Esq.  
Zeh, Spoo & Associates  
450 Marsh Avenue  
Reno, Nevada 89509

**Re: Mineral County Motion To Intervene  
Our File No. 1709.0083**

Dear Jim:

I have reviewed the letter which you faxed to my office yesterday. You propose to send that letter to Water Right Holders on the Walker River system. In my view you should not send the letter. Although you profess to be unable to give legal advice to the persons to whom you are sending the letter, you are, in fact, providing legal advice when you state "signing and returning the waiver of personal service does not otherwise affect your legal rights." In my judgment signing and returning a waiver of personal service may affect legal rights.

In summary, I think it is highly inappropriate for you to communicate with persons who you do not represent, who may be represented by others and against whom you are asserting adverse claims.

Sincerely,

Gordon H. DePaoli  
Gordon H. DePaoli

Gordon H. DePaoli

GHD:jgh

cc: John Lange (303) 294-1931  
Scott McElroy (303) 444-3490  
David E. Moser (415) 393-2286  
Mary Hackenbracht (510) 286-4020  
Susan J. Taylor (702) 687-5798  
Linda Bowman (702) 786-1177

**Exhibit C**



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex  
Carson City, Nevada 89710  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
*Attorney General*

BROOKE A NIELSEN  
*Assistant Attorney General*

April 28, 1995

Jim Spoo, Esq.  
450 Marsh Avenue  
Reno, Nevada 89509

Re: C-125C Walker River - Mineral County Motion to Intervene

Dear Jim:

I was out of the office when your proposed letter to the water right holders arrived. I have since reviewed both of your letters and Gordon DePaoli's response.

I also do not think it is appropriate for you to be sending such a letter. Mineral County's interests are adverse to those of the water right holders and your letter does not clearly express that you are the legal counsel representing Mineral County in its assertions against the water right holders. The documents which the Court ordered Mineral County to serve on the water right holders speak for themselves and are sufficiently clear to apprise the water right holders of the lawsuit and steps to be taken.

I find that your letter in fact does provide legal advice which is an inappropriate communication with persons whom you do not represent and against whom you are asserting adverse claims. Thus, the State of Nevada would find it objectionable for you to send such a letter.

Sincerely,

FRANKIE SUE DEL PAPA  
*Attorney General*

A handwritten signature in black ink, appearing to read "Frankie Sue Del Papa".

SUSAN JOSEPH-TAYLOR  
Deputy Attorney General  
Division of Water Resources  
687-7319

Exhibit D

Charles R. Zeh, Esq.\*  
James Spoo, Esq.\*\*

450 Marsh Avenue  
Reno, Nevada 89509  
(702) 323-4599  
Fax: (702) 786-8183

\* Also admitted in Minnesota

\*\* Also admitted in Washington, D.C.

April 27, 1995

To: Gordon  
Fr: Jim  
Re: Suggested Letter.

1. Thanks, we will only do it if it can be done right.
2. I don't think you are suggesting that we would send the letter to persons with known legal counsel, because we would not.
3. We can take out the phrases about not otherwise affecting their legal rights. Even though the statement is true in other than a minimalist sense it is colorably legally inaccurate.
4. The purpose overall is nothing more than a summation of the original mailing, which is designed to encourage response in an unusual situation, for the benefit of all, where response is slow so far.
5. If you have alternative language for any parts or all of the letter, please submit it, and I'm sure it would be acceptable.

Exhibit E